

In the Drawings:

The office action objects to the drawings under 37 C.F.R. 1.83(a) for failing to show every feature of the invention specified in the claims. In response, Applicant has submitted additional Fig. 2A showing a magnified top view of an anchoring plate containing one example of a locking mechanism, e.g., a pinch slit, which is located in the openings of the anchor plate. Support for the embodiment in this figure is found at p. 8, [0023]. Furthermore, applicant has deleted or canceled those claims having the other features identified by the office action as not being included in the figures. As such, the above objection with respect to the drawings has been overcome.

REMARKS

Claims 1-69 are pending in this application. Claims 1-28, 31-41 and 44-69 stand rejected, while claims 29, 30, 42, and 43 are objected to as being dependent upon a rejected base claim. Reconsideration and allowance in view of the following amendments and remarks are requested. By this Amendment, Applicant has added new claim 70 directed to a kit, which is essentially claim 29 written in independent form with the addition of the word "substantially" to describe the diameters of at least two anchoring plates. Support for this additional term is found at paragraph [0038], ll. 10-11. Because the office action indicated that claim 29 would be allowable if written in independent form, Applicant submits that new claim 70 is also in condition for allowance.

Similarly, Applicant has added new claim 71 directed to a surgical retractor, "...wherein the plurality of anchoring plates are supplied in multiples of two where at least two anchoring plates within the multiple of anchoring plates have substantially equal diameter," which is a limitation from allowable claim 29 with the addition of the term "substantially" as indicated above. Applicant submits that new claim 71 is also in condition for allowance by incorporating the above limitation of allowable claim 29 which is not taught or suggested by the cited art.

Further, Applicant has amended claims 28, 31, and 64 for purposes of clarity to provide proper antecedent basis. Applicant has also cancelled claims 8, 21, 42, 43 and 49-63 without prejudice. Support for the new claims and amendments can be found in the specification and claims as originally filed. The new claims and

amendments introduce no new matter, and thus, their entry is respectfully requested.

Claim Rejections – 35 U.S.C. § 112

Claims 28, 31, and 49-69 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite and for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In response, Applicant has either amended some of these claims to provide sufficient antecedent basis and clarity or cancelled other of these claims. Thus, the above rejection has been overcome.

Claim Rejections – 35 U.S.C. § 102

Claims 1-4, 6, 7, 9, 11, 13, 49-52, 55, 59, 61 and 63 were rejected under 35 U.S.C. § 102 as being anticipated by Klingenstein. In order for a reference to be considered anticipatory art with respect to the claims at issue, such reference must teach each and every element of the claims. Independent claim 1, teaches, inter alia, "An expandable surgical retractor comprising:...a plurality of anchoring plates slidably articulated to the central rod...." Klingenstein, however, does not teach or suggest, inter alia, "An expandable surgical retractor comprising:...a plurality of anchoring plates slidably articulated to the central rod...." To the contrary, Klingenstein teaches an "apparatus in which the proximal end of the flexible spines 14 are coupled to a collar 16 which itself is fixed to the proximal end of the shaft 12....[T]he structure for bowing the flexible spines 14 can be a collar 18 slideably mounted on the distal end of the shaft 12." Col. 4, ll. 24-32 (emphasis added).

Thus, the collars 16 and 18 are not both slidably articulated to a central rod. Rather, only collar 18 is slidably mounted to a shaft, while collar 16 must remain fixed to the shaft in order to facilitate bowing of the flexible spines as they are pushed against collar 16 due to collar 18 (to which the spines are coupled) being slid proximally toward collar 16. Col. 4, ll. 37-49; Col. 5, ll. 6-18. Thus, not all elements of the rejected claims are disclosed by Klingenstein which does not teach or suggest, inter alia, "a plurality of anchoring plates slidably articulated to the central rod...." Additionally, Applicant notes that claim 10 was not originally rejected in the outstanding office action but it should also be allowable based on the reasons discussed above. Furthermore, as indicated above, claims 49-52, 55, 59, 61 and 63 were cancelled, rendering the rejection with respect to those individual claims moot. In view of the above, Applicant submits that this rejection has been fully addressed and overcome.

Claims 64, 66, 68 and 69 were rejected under 35 U.S.C. § 102 as being anticipated by Shah. Applicant has amended claim 64 to further include "a plurality of flexible wires which fit in the openings in the aperture; wherein the flexible wires contain a bulbous end on each end of the wires to maintain the wires within the openings of the aperture." Such element is not disclosed by Shah, and as such, Shah does not anticipate the aforementioned claims. Thus, Applicant submits that the above rejection has been overcome.

#### Claim Rejections – 35 U.S.C. § 103

The office action also rejected a number of claims under 35 U.S.C. § 103 as being obvious over Klingenstein as a primary reference alone, or in view of several

secondary references including, Starkweather, Horzewski, Volz, and Horton.

Specifically, Claims 27 and 31-33 have been rejected as being obvious over Klingenstein alone;

Claims 12, 34-37, 39, 40, 44, 46-48, and 62 have been rejected as being obvious over Klingenstein in view of Starkweather;

Claims 15, 25, 28, 53 and 61 have been rejected as being obvious over Klingenstein in view of Horzewski;

Claims 14-20, 22-26, and 38 have been rejected as being obvious over Klingenstein in view of Starkweather and Horzewski and Klingenstein in view of Volz;

Claim 21 has been rejected as being obvious over Klingenstein in view of Starkweather and Horzewski and further in view of Volz; and

Claims 56 and 60 have been rejected as being obvious over Klingenstein in view Horton.

In order for references to render a claim obvious, the combination of references must disclose each and every element of the claim. As discussed above, Klingenstein does not teach or suggest, inter alia, "a plurality of anchoring plates slidably articulated to the central rod...." in accordance with the above rejected claims. Indeed, Klingenstein teaches away from a plurality of anchoring plates slidably articulated to the central rod because collar 16 must be fixed to allow spines 14 to properly bow as they are forced against and through orifices 22 in collar 16. Col. 5, ll. 6-18. Moreover, the secondary references cited in the office action and listed above do not overcome the deficiencies of Klingenstein.

For example, Starkweather was also cited in the office action as disclosing a plurality of anchoring plates 17 slidably articulated to the rod. However, this is not an accurate representation of the teachings of Starkweather. Starkweather teaches a tube having collars 17 with openings 16 provided in the collars 17 for receiving and guiding wires 15. Pg. 1, col. 2, ll. 67-71; Fig. 1. The tube also includes a sleeve 19 which covers the wires 15 and the sleeve 19 is held against shifting movement by abutting against one of the collars 17. Pg. 1, col. 2, ll. 74-84. Therefore, at least one of the collars 17 must be fixed in order to prevent shifting movement of the sleeve 19 which abuts against said collar. Further, Starkweather does not teach that either of the collars are slidable as they are merely used for guidance of the wires and to prevent shifting movement of sleeve 19. Thus, Starkweather does not teach "a plurality of anchoring plates slidably articulated to the central rod" but rather teaches away from having both of the collars 17 slidably articulated to the tube, because if the collar 17 could move it would not serve its purpose of preventing shifting movement of sleeve 19.

As for the other secondary references listed above, none of these references correct the deficiencies of Klingenstein and Starkweather and they do not disclose, inter alia, "a plurality of anchoring plates slidably articulated to the central rod...." Additionally, claims 53, 56 and 60-62 were canceled and the rejections with respect to these claims are rendered moot.

Thus, in view of the above arguments, it is evident that all of the elements of the rejected claims are not disclosed by the cited references, and as such, Applicant respectfully submits that the above rejections have been overcome.

Lastly, claim 65 has been rejected as being obvious over Shah in view of Horton and claim 67 has been rejected as being obvious over Shah in view of Williams. As discussed above, Shah does not disclose all of the limitation of independent claim 64 as amended. Furthermore, these references do not correct the deficiencies of Shah. Thus, Applicant submits that these rejections are also overcome.

#### Claim Objections

Claims 29, 30, 42-43 and 57-58 were objected to. Applicant has amended claim independent claim 27 from which 29 and 30 depend to overcome the above rejections, thus these claims are allowable in their current form. Further, Applicant cancelled claims 42-43 and 57-58.

#### Specification

Applicants have cancelled claim 49 thus overcoming the objection to the specification for failing to provide proper antecedent basis for the claimed subject matter of claim 49.

CONCLUSION

In view of the foregoing, it is submitted that this application is in condition for allowance. A Notice of Allowance is hereby respectfully requested. If the Examiner has any questions or matters that can be expediently handled by telephone, he is encouraged to contact the undersigned at (310) 788-3231.

Respectfully submitted,  
Perkins Coie LLP

A handwritten signature in black ink, appearing to read 'Steven M. Giovannetti', is written over a horizontal line.

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